

ORIGINAL

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EX PARTE OR LATE FILED

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VIA HAND DELIVERY

December 3, 2002

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EX PARTE

DEC - 3 2002

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Oral *Ex Parte* Presentation
CC Docket Nos. 01-337, 96-45 and 02-33

Dear Ms. Dortch:

On December 2, 2002, Steven Teplitz, Vice President and Associate General Counsel, AOL Time Warner Inc. ("AOL"), Donna N. Lampert and the undersigned, both of Lampert and O'Connor, P.C., met with Jordan Goldstein, Senior Legal Advisor to Commissioner Copps, to discuss the above-referenced dockets.

In the meeting, consistent with AOL's Reply Comments filed April 22, 2002 in CC Docket No. 01-337, its Reply Comments filed July 9, 2001 in CC Docket No. 96-45 and its Comments and Reply Comments filed May 3, 2002 and July 1, 2002, respectively, in CC Docket No. 02-33, we discussed the following points.

We explained first that as a factual matter, even though there is competition for retail information services, there is still not competition for wholesale broadband transmission services. Based on the facts and the record before it, we urged the Commission not to classify the BOCs as nondominant, and instead to maintain the requirements that BOCs make available the transmission services to unaffiliated ISPs on the same rates, terms and conditions that the BOC provides itself. We also emphasized that the Commission must ensure transparency in order to deter anticompetitive behavior and to enhance enforcement. We noted that the core principles of nondiscrimination and transparency underlying the *Computer Inquiry* rules are valuable tools that are currently used by unaffiliated ISPs. We noted that these successful principles should be retained even if the Commission allows some detariffing. We addressed the November 15, 2002 and November 26, 2002 *ex parte* letters filed by SBC and stressed the importance of ensuring nondiscrimination between BOC affiliated and nonaffiliated ISPs. We urged the Commission to provide explicit guidance maintaining the core principles, specifying

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the services to which they would apply and ensuring that rates, terms and conditions available to affiliated ISPs will continue to be publicly accessible and available to unaffiliated ISPs.

Second, we urged the Commission to ensure that the pass-through of telecommunications carrier universal service costs is reasonable and nondiscriminatory by limiting the charges to the Commission-mandated carrier contribution amount, by requiring carriers to provide advance notice of pass-through increases and by requiring that the pass through charge be nondiscriminatory between affiliated and unaffiliated entities. If the Commission determines that a mark-up for administrative costs should be allowed, AOL recommends that it be limited to a fixed, safe harbor percentage and that carriers be required to demonstrate that the mark-up recovers only costs directly related to the provision of universal service.

Finally, we stated that clear Commission precedent establishes that wholesale DSL is a telecommunications service subject to Title II regulation, whether provided to BOC-affiliated ISPs or to unaffiliated ISPs. Further, we explained that wholesale DSL services are squarely within the *NARUC I* precedent. We emphasized that the Commission must recognize that this is not merely an issue of semantics: there are thousands of consumers that will be affected if they can no longer be assured that their ISP will be able to obtain DSL services on a transparent and nondiscriminatory basis.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, two copies of this letter are being provided to you for inclusion in the public record in the above-captioned proceedings. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Linda L. Kent

Counsel for AOL Time Warner Inc.

cc: Jordan Goldstein